

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8510 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KRISHNA CERAMICS INDUSTRIES

Versus

UNION OF INDIA AND ANOTHER

Appearance:

MR TH SOMPURA for Petitioner

MR JC SHETH for Respondent No. 1 & 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 21/02/97

ORAL JUDGEMENT

By means of filing this petition under Article 227 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order directing the respondents to deliver coal wagon at the same price and same freight charges as per Railway Receipt at the place of destination. The petitioner has also prayed to direct the respondents to produce entire record/File required to

be maintained as per Circular dt. August 16, 1984 while diverting and/or intercepting coal wagon regarding which Railway Receipt was issued to the petitioner.

The petitioner is a registered partnership firm and manufactures cups and saucers. Coal is being used in the plant which is installed for manufacturing cups and saucers. The petitioner had booked coal wagon, particulars of which are as under :-

Wagon No.	R.R. No.	Invoice No.	Date	From	To
NR8698	269089	70	7-3-83	Bijuri	Dhangadh -ara.

The wagon was not received by the petitioner at the place of destination. According to the petitioner, the wagon was intercepted and/or diverted by the respondents illegally and contrary to instructions contained in circular dt. April 27, 1991 issued by Government of India, Ministry of Railways, (Railway Board). The petitioner, therefore, had instituted Special Civil Application No. 3833 of 1993 before High Court. It is claimed by the petitioner that the respondents had promised the petitioner that on production of relevant documents, coal wagon would be delivered to the petitioner, and therefore, the petitioner had withdrawn the said petition. Said petition was accordingly disposed of. The petitioner has claimed that inspite of promise given by the respondents, the coal wagon was not delivered to the petitioner. Therefore, the petitioner had filed Special Civil Application No. 6171 of 1987 before High Court. The court (Coram: B.S.KAPADIA, J.) disposed of the petition vide order dt. March 15, 1991 in the following terms :-

"The present petitions are filed for writs of mandamus or any appropriate order restraining the respondents from withholding the delivery of booked wagons and directing the respondents to give delivery of the coal booked in the same quantity and quality without charging extra freight or costs as per the Railway Receipts at the places of destination. By amending the prayers in the petition the petitioners have asked for a direction to the respondents to pay the compensation of the goods consigned in the booked wagons at the bill rate with interest at the reasonable rate which the Railway authorities consider proper.

2. Mr.J.C.Sheth, learned Advocate appearing for the respondents, who was opposing the petitions stated that the respondents are prepared to give compensation without interest. However, the request for reasonable interest which the respondents think proper is quite reasonable. In that view of the matter, the respondents are directed to pay to the petitioners compensation of the goods consigned in the booked wagons at the bill rate with interest at the reasonable rate which the respondents think proper, within a period of six weeks from the date of receipt of this order.

3. In view of the above direction, there is no purpose in admitting the petitions. Hence the petitions are disposed of with the above directions. Notice discharged in both the petitions. No order as to costs".

The petitioner has claimed that inspite of clear direction by the Court, compensation is not paid to the petitioner. Under the circumstances, the petitioner has filed this petition and claimed reliefs to which reference is made earlier.

On notice of rule being served, affidavit in reply has been filed on behalf of the respondents. In Paragraph 4 of the reply affidavit, it is stated that Railway Administration had instituted inquiry to trace out the wagon but the wagon could not be traced. What is highlighted in the said reply is that the petitioner had never approached concerned authority for processing the claim of compensation, and therefore, the petition should not be entertained.

From what is stated above, it is clear that the respondents have failed to trace out the wagon and deliver the same to the petitioner. In view of the directions given by Court on March 15, 1991 in Special Civil Application No. 6171 of 1987, it was incumbent on the respondents to pay to the petitioner compensation of the goods consigned in the booked wagon at the bill rate with interest at the reasonable rate within a period of six weeks from the date of receipt of writ issued in Special Civil Application No. 6171 of 1987. Admittedly, till today the compensation as directed by the court in Special Civil Application No. 6171 of 1987 is not paid to the petitioner.

Having regard to the facts and circumstances of the case, I am of the opinion that interest of justice would be served, if necessary direction is given to the respondents to pay compensation at the bill rate with reasonable rate of interest to the petitioner.

For the foregoing reasons, the petition partly succeeds. The petitioner is directed to make claim regarding compensation before the concerned authority within one month from today. The respondents are hereby directed to pay compensation to the petitioner regarding goods consigned in the booked wagon at the bill rate with interest at the rate of 10% per annum from the date of Railway Receipt. The amount of compensation shall be paid to the petitioner as early as possible and preferably within two months from the date of the application for compensation which may be made by the petitioner is received by the competent authority. Rule is made absolute to the extent indicated hereinabove, with no order as to costs.
